



227 of the Constitution of India against the order passed by the Deputy Collector, Chhote-udepur and Government of Gujarat respectively on 7.4.84 and 3.10.84.

2. The petitioner has purchased land bearing survey no. 232 admeasuring 2 acres and 29 gunthas from one Pahadsingbhai Raijibhai of village Umthi by registered sale deed dated 11.5.70. . Before that he had purchased half of the land of survey number 234/1 admeasuring 2 acres and 29 gunthas of village Umthi from same Pahadsingbhai Raijibhai by registered sale deed dated 25.6.69. As regards the purchase of said land there was also mutation entry in the name of the petitioner in the record of rights on 25.5.69. But about 13 years thereafter, i.e. in the year 1983, a show cause notice was issued to the present petitioner as to why said transaction in his favour should not be set aside under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947(hereinafter referred to as the Act) . In pursuance to the said show cause notice the petitioner had given his reply and the Deputy Collector made necessary inquiry and by his order dated 30.11.83, he came to the conclusion that the said transaction of the sale of survey no. 232 admeasuring 2 acres and 29 gunthas of village Unthi was not a sale of fragmentation and consequently was not hit by the said Act. However, he found that the sale of half of the land of survey no. 234/1 was infringement of the provisions of the said Act from 1947. He consequently passed necessary order regarding quashing of the said sale deed in favour of the petitioner. Against the said decision of the Deputy Collector as regards the land of survey no.234/1, the petitioner had preferred Revision Application before the State Government and by order dated 27.2.84 the State Government was pleased to set aside the whole of the order of the Deputy Collector dated 30.11.83 and remanded the matter to the Deputy Collector to hold a fresh inquiry. Accordingly the Deputy Collector had held fresh inquiry and by his order dated 7.5.84. He also held that said transaction in favour of the petitioner were contrary to the provisions of the said Act of 1947. He consequently set aside this sale and passed consequential orders.

3. Feeling aggrieved by the said decision, present petitioner had preferred revision application before the State Government and byan order dated 3.10.84 the order passed by the Deputy Collector on 7.5.84 was confirmed and the revision was dismissed.

4. Therefore, the petitioner has come before this court by way of this petition. There is no dispute of the fact that there are two transfers i.e. sale deed in favour of the original petitioner in respect of two lands of survey no. 234/1 and 232 of village Unthi in the year 1969 and 1970 respectively. Out of these two sale deeds, sale deed dated 11.5.70 as regards the land of survey no. 232 is of the transfer of the whole of the land admeasuring 2 acres and 29 gunthas. Thus the land covered by the transaction was more than 2 acres and it was not a transfer of fragment. If the amended provisions of section 31 are taken into consideration then it would be quite clear that if there is of transfer of the whole of the holding of a consolidation block between February 1969 and the year 1978, then such a transfer was protected. Therefore, in view of the said amended provision of section 31 the transfer in favour of the petitioner as regards the land of survey no. 232 could not be said to be contrary to the provisions of the said Act 1947.

5. As regards the transfer of land of survey no. 234/1, it must be mentioned that said transfer is of the year 1969 and the revenue authorities had even certified the mutation entry in favour of the petitioner on 25.5.69. Action against the petitioner is taken in the year 1983. That the action in respect of both the lands are initiated after a lapse of 13 years from the date of transaction in favour of the petitioner. No action was taken in respect of the said illegal transfer as per the scheme of Government prior to 1983. If no action is taken as regards such invalid transfer for many years then the act of the Government for taking action under the provisions of the said Act 1947 will stand hit by the principles of delay and laches. The learned single Judge of this Court Mr. S.B. Majmudar who has been elevated to the Apex Court has held in the case of Ranchhodbhai Lallubhai Patel vs. State of Gujarat reported in 1984(2) GLR 1225 that the proceedings initiated after 7 years of transfer could not be said to be reasonable, just and legal. Exercising power under section 9 of the Act at grossly belated stage is held to be unreasonable, unjust and illegal. I do not find any reason to differ with the view taken by His Lordship Mr. Majmudar J. I therefore, hold that the action taken against the present petitioner after more than 12 years was unreasonable, unjust and illegal. I therefore, allow the present petition and quash and set aside the order passed by the Deputy Collector in respect of the lands bearing survey nos. 232 and 234/1 covered by the sale deeds in favour of the petitioner. Rule is made absolute. No order as to costs.

(S.D.Pandit.J)